

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. A-5741**

**PETITION OF MARK AND DEANNE GIARRAPUTO**

**OPINION OF THE BOARD**

(Effective date of Opinion, June 7, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap.59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(a), 59-C-1.323(b)(1) and 59-B-3.1 of the Zoning Ordinance. The proposed construction of (1) a covered porch requires a 2.83 foot variance as it is within twenty-five (25) feet of the established front building line and of (2) a second-story addition that requires a variance of 1.91 foot variance as it is within 3.19 feet of the side lot line. The established front building line is 27.83 feet and the side lot line setback is five (5) feet.

The subject property is Lot 2, Block C, Indian Spring Terrace Subdivision, located at 216 Indian Spring Drive, Silver Spring in the R-60 Zone (Tax Account No.01015883).

Decision of the Board: Requested variances: **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The existing house was built in the early 1920s, prior to the enactment of the Zoning Ordinance. The porch has existed on the property since the time the house was built. Neither the porch nor the house conforms to the current applicable setback standards.
2. The petitioners propose to raise the existing roof on the one-story portion of the residence and add a new second floor, as well as a front porch and stoop.
3. The proposed construction will not alter or expand the footprint of the existing residence.

**FINDINGS OF THE BOARD**

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the existing non-conforming dwelling constitutes an extraordinary situation and that the strict application of the zoning regulations would require the owner to demolish and rebuild the dwelling.

The Board observes that this finding is consistent with the policy set forth in Courts and Judicial Proceedings Article, Section 5-114, which bars the government from proceeding against a structure, in violation of the setback restrictions, which has been in existence for more than 3 years.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid extraordinary situation.*

The Board finds that allowing the continuance of the dwelling and a porch, which do not alter the dwelling's footprint, is the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The existing and proposed structures are in harmony with the surrounding neighborhood and the Board finds that the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The existing dwelling and the proposed construction will not visibly impact the view from the neighboring properties and the Board finds that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties. There was no opposition to the petition and the record contains no correspondence in opposition to the variance request.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Alison Ishihara Fultz, and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 7th day of June, 2002.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.